ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D. C. 20554

In the Matter of	
Petition of the People of the State of California and the Public Utilities Commission of the State of California Requesting Authority to Regulate Rates Associated With the Provision of Service Within the State of California	PR Docket No. 94-105

COMMENT AND OPPOSITION OF GTE SERVICE CORPORATION, ON BEHALF OF ITS TELEPHONE AND PERSONAL COMMUNICATIONS COMPANIES, TO A PROPOSED PROTECTIVE ORDER

GTE SERVICE CORPORATION
ON BEHALF OF ITS
TELEPHONE AND PERSONAL
COMMUNICATIONS COMPANIES

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Summary

GTE Service Corporation, on behalf of its Telephone and Personal Communications Companies, urges the Federal Communications Commission defer consideration of the terms of a protective order under which redacted material contained in the Petition of the People of the State of California and the Public Utilities Commission of the State of California Requesting Authority to Regulate Rates Associated with the Provision of Service Within the State of California ("CPUC Petition") until the Commission rules on the Motion of the Cellular Carrier Association of California to Reject Petition, the National Cellular Resellers Association's Request for Access to California Petition for State Regulatory Authority Pursuant to the Terms of a Protective Order ("NCRA Request"), the Opposition of GTE Service Corporation, On Behalf Of Its Telephone And Personal Communications Companies, To The Request For Access To California Petition For State Regulatory Authority Pursuant To The Terms Of A Protective Order, Submitted By The National Cellular Resellers Association and other Oppositions. Apparently, the contested redacted information falls into two broad categories: 1) information determined by an Administrative Law Judge to be confidential; and 2) information obtained by the California Public Utilities Commission from the State Attorney General

and filed with the Federal Communications Commission under seal. As GTE has interests in numerous cellular licenses throughout the State of California, it would be directly and adversely affected by release of this confidential and highly proprietary information. The release of this information would adversely affect the competitive position of GTE and every other cellular licensee in the State of California.

A decision by the Commission on these pleadings which upholds the confidential nature of these pleadings or one that otherwise dismisses or denies NCRA's Request, would moot the need for any protective order. Thus, it would be premature and inappropriate, at this time, to determine the terms under which disclosure would be made, when the Commission has yet to decide whether the information need be disclosed at all.

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COMMENT AND OPPOSITION OF GTE SERVICE CORPORATION, ON BEHALF OF ITS TELEPHONE AND PERSONAL COMMUNICATIONS COMPANIES, TO A PROPOSED PROTECTIVE ORDER

GTE Service Corporation ("GTE"), on behalf of its Telephone and Personal Communications Companies, through counsel and pursuant to Section 1.45 of the Commission's Rules, submits these comments in response to the invitation of the Federal Communications Commission ("FCC" or "Commission") to address the use of a protective order for releasing redacted materials submitted by the Public Utilities Commission of the State of California ("CPUC").[1] Consideration of a protective order is premature until the Commission rules on the Motion of the Cellular Carrier Association of California to Reject Petition or

[1] Public Notice requesting Comment on the Draft Protective Order PR Docket No. 94-105, DA 94-1083, released September 30, 1994.

Alternatively Reject Redacted Information, the National Cellular Resellers Association's ("NCRA") Request for Access to California Petition for State Regulatory Authority Pursuant to the Terms of a Protective Order and related pleadings. As a threshold matter the Commission must first decide whether the release of the information is warranted. As will be discussed infra, such information is confidential and proprietary and its disclosure could cause substantial competitive harm to GTE.

GTE, through its affiliates GTE Mobilnet Incorporated and Contel Cellular Inc., has extensive cellular interests within the State of California and is therefore directly and adversely affected by the disclosure of highly sensitive and proprietary information that the CPUC has previously declared confidential.

I. History of the Redacted Materials in This Case.

In 1993, the CPUC instituted an investigation into mobile telephone services and wireless communications. During this investigation, an Administrative Law Judge ("ALJ") ordered cellular carriers to produce certain information before the CPUC. This data included information on sales, rates, facilities and other financial statistics that would assist the CPUC in carrying out its investigation. Subsequently, cellular carriers requested

confidential treatment of the information they were providing to the CPUC.

On July 19, 1994, the ALJ ruled on motions filed by cellular carriers requesting confidential treatment for such information as the number of subscribers under individual payment plans and capacity utilization data because it revealed sensitive information about market share and marketing strategies. The ALJ reasoned that this type of information could be used by competitors to adapt their own strategies in response to particular competitor's plans. The ALJ also felt that disclosure of capacity utilization data could allow competitors to extrapolate information regarding configuration and use of the carrier's system. The information could then be used as a basis for making planning decisions.[2] The ALJ found that:

> "[c]onfidential treatment is warranted for the number of subscribers associated with specific billing plans and for data relating to capacity utilization, at least for recent periods . . . . [S]uch information has commercial value to competitors which could be used to the detriment of the carrier disclosing it.[3]

The ALJ then ordered the release, under a nondisclosure agreement, of all data for years 1991 and earlier and the following data for years 1992 and 1993: aggregate activated

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[2] Administrative Law Judge's Ruling Granting in Part Motions for Confidential Treatment of Data (I.93-12-007) released July 19, 1994 ("July Order"), pp. 2-3. A copy of this ruling is attached hereto as Appendix A and incorporated into these comments by reference.

[3] Id. at 4.

subscriber numbers on discount rate plans without disclosing numbers on individual plans, aggregate activated numbers on basic rate plans, and aggregate activated numbers subscribers divided between wholesale and retail service.[4]

Subsequent to this ruling, parties submitted motions for modification, which the ALJ ruled upon in the Order dated August 8, 1994. In the ruling, the ALJ identified the standard for confidential treatment as a balance between "imminent and direct harm of major consequence" caused by public disclosure and "the public interest of having an open and credible regulatory process."[5] The ALJ stated that examples of information that caused an imminent and direct harm of major consequence included customer lists, prospective marketing strategies, and true trade secrets.[6]

The ALJ stated that disclosing the data in aggregate would not alleviate the problem of significant competitive harm. Disclosing absolute numbers still reveals relevant market share, and knowledge of market share could be used by a competitor for the competitor's advantage. The ALJ then cited structuring an advertising campaign on market share

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[4] Id. at 6.

[5] In Re Pacific Bell 20 CAL PUC 237, 252 quoted in Administrative Law Judge's Ruling Granting Motion for Modification of July 19, 1994 Ruling (I.93-12-007) released August 8, 1994 ("August Order"), p. 4. A copy of this ruling is attached hereto as Appendix B and incorporated into these comments by reference.

[6] Id.

data as an example of how competitors may use carrier market share information.[7] Such information permits a competitor to " . . . assess the carrier's strengths and weaknesses and adjust its marketing strategy accordingly."[8] The ALJ went on to rule that because the information could be of great value to competitors, the information was a trade secret.[9] The ALJ stated that carriers should be allowed to protect sensitive information such as aggregate subscriber numbers in order to promote a more competitive market.[10] The ALJ ruled this information was confidential and subject to the nondisclosure agreement as explained in the July Order.[11] Subsequently, the cellular carriers produced the requested data under a nondisclosure agreement.

During the above proceedings, the California Attorney General's Office was apparently conducting an antitrust investigation of some undisclosed cellular carriers.[12]

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[7] Id.

[8] Id.

[9] Id. at 6. Trade secret is defined under the Uniform Trade Secrets Act as codified in the California Civil Code (Section 3426 et seq.) as information ". . . that derives independent economic value, actual or potential, from not being generally known to the public . . . and that is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." Id.

[10] Id.

[11] Id. at 7.

[12] Opposition of US West Cellular of California, filed in PR Docket No. 94-105, dated October 4, 1994 at 3, citing to CPUC Request for Proprietary Treatment of Documents Used in

The CPUC acquired information regarding cellular carriers from the Attorney General's Office. The release by the Attorney General's Office, however, was conditional on the data being treated as confidential and filed under seal to the FCC.[13] Apparently, data from the Attorney General's investigation may have been incorporated by the CPUC into the Petition of the People of the State of California and the Public Utilities Commission of the State of California to Retain Regulatory Authority Over Intrastate Cellular Service Rates ("CPUC Petition"), which was filed with the FCC.

On August 9, 1994, the CPUC filed with the Commission its Petition to Retain Regulatory Authority Over Intrastate Cellular Service Rates, with Appendices and a copy filed under seal, containing information covered by a Request for Proprietary Treatment of Documents Used in Support of Petition to Retain Regulatory Authority Over Intrastate Cellular Service Rates. The CPUC redacted certain information in recognition of its confidential nature. Thus, the CPUC took steps necessary to ensure the information would be kept confidential.

Support of Petition to Retain Regulatory Authority Over Intrastate Cellular Service Rates, filed in PR File No. 94-SP3 at 2.

[13] See Id.

On August 12, 1994, by Public Notice[14], the Commission announced the filing of the CPUC's Petition. The Commission provided the redacted version to the public for comment. Every commenter relied upon this information in filing their comments by September 19, 1994.

On September 13, 1994, the CPUC filed portions of its Petition containing previously redacted information with the Commission that, according to the CPUC, had been previously publicly available. In a letter dated September 16, 1994, and addressed to the Commission, the Principal Counsel for the CPUC explained the recent release stating:

> . . . mistakenly redacted publicly available pricing data . . . has now been unredacted," and noted that certain data continues to be redacted, as the CPUC has treated it " . . . as confidential pursuant to Section 0.457(d)(2)(i) of the Rules and Regulations of the Federal Communications Commission . . . . Specifically, this data contains information about the number of subscribers per pricing plan which the cellular carriers believe is commercially sensitive information, and hence, should remain confidential."[15]

On the last day for filing Comments, the NCRA filed its comments and a Request for Access to California Petition for State Regulatory Authority to the Terms of a Protective Order ("NCRA Request") dated September 19, 1994. The NCRA requested that redacted materials be released to the public

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[14] PR File No. 94-SP3, DA 94-876 Published in Federal Register Vol. 59 No. 159, August 18, 1994.

[15] Letter from Ellen S. LeVine, Principal Counsel for the Public Utilities Commission of the State of California, to Regina Harrison, Private Radio Bureau, Federal Communications Commission (September 16, 1994) (on file with the FCC).

pursuant to the terms of a proposed protective order. On September 19, 1994, the Cellular Carriers Association of California ("CCAC") filed its "Motion of the Cellular Carriers Association of California to Reject Petition or, Alternatively Reject Redacted Information." ("CCAC Petition").[16] On September 29, 1994, GTE and others filed Oppositions to the NCRA petition for the redacted information.[17]

The FCC contacted parties of record and scheduled a meeting, the purpose of which according to the FCC, was to discuss the terms under which a proposed protective agreement would be signed. The FCC held this meeting on September 30, 1994. GTE and other carriers objected to consideration of a protective order prior to a decision on the merits of the CCAC's Motion, NCRA's Request and related oppositions as premature. The FCC, at the conclusion of this meeting, invited all interested parties to file written comments concerning both the proposed protective order and any objections to the procedure, on or before October 7, 1994. Subsequently, on September 30, 1994, a Public Notice was issued that made public the date for comment as well as the proposed protective order. GTE submits these comments

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[16] Without restating the CCAC's position, GTE agrees with and supports the arguments in said Motion.

[17] Other Oppositions were later filed on September 29, 1994. The time for filing a reply to the Oppositions to the NCRA Petition has not expired.

in response to the Commission's request.

II. Consideration of Protective Order at this Time Would be Premature.

Currently, the Commission has numerous unresolved pleadings concerning the appropriateness of using all or part of the confidential material in any way. The CCAC maintains that the FCC should reject the CPUC's Petition, or at least only consider the redacted version.[18] NCRA's Request asks for the release of confidential information. GTE and other parties[19] have filed Oppositions detailing the procedural and substantive defects of the NCRA Request. The time period for NCRA to file its Reply to these Oppositions has yet to expire.

Thus, the issue of whether any confidential information should be released has been placed squarely before the Commission but not resolved. GTE respectfully submits that by inviting comment on the nature of a confidentiality agreement, the Commission creates the appearance that it has prematurely and improperly decided the merits of the

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[18] Motion of the Cellular Carriers Association of California to Reject Petition or Alternatively, Reject Redacted Information, filed September 19, 1994.

[19] In the current round of comments due October 7, 1994, Oppositions have already been filed by U.S. West, the Cellular Carriers Association of California, the Los Angeles Cellular Telephone Company, and the Cellular Telecommunications Industry Association. More Oppositions may be forthcoming.

outstanding pleadings. Until the Commission decides that the information will be released, deliberations concerning how it will be released illustrates the classic metaphor of putting the cart before the horse.

Requesting comments on the terms of the proposed protective order at this time is premature for another reason. GTE cannot formulate an opinion regarding the protective order at this time because it is not clear what the redacted material covers. GTE submitted data to the CPUC, but GTE is unaware of how the CPUC utilized the information after receiving it. GTE believes that different types of conclusions or comparisons would warrant different protective order terms. GTE, therefore, cannot speculate as to how data should be released to the public under any protective order until GTE knows what is being released.

III. The Commission should not Release this Confidential Information.

A. The Submitted Information is Confidential.

The information that GTE submitted to the CPUC, and the resultant CPUC data was adjudged to be confidential by the ALJ as discussed above. The Trade Secrets Act explicitly

states that it covers confidential statistical data.[20] The NCRA Request runs afoul of the Trade Secrets Act because the Request would release material that has been determined to be confidential by an ALJ.

In addition. even though a Freedom of Information Act ("FOIA") request was not made,[21] a FOIA exception to disclosure would apply.[22] Exemption 4 of the FOIA[23], provides for the withholding from public scrutiny of ". . . commercial or financial information obtained from a person and privileged and confidential." Information is considered confidential "if disclosure . . . is likely to have either of the following effects: (1) to impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of

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[20] See 18 U.S.C. §1905, see also Policies and Rules Concerning Operator Services Providers, Stuart A. Whitaker, On Request for Inspection of Records, Report and Order, 6 FCC Rcd. 5058, 5060 released August 16, 1991, citing National Parks and Conservation Ass'n v. Kleppe, 547 F.2d 673, 684 (D.C. Cir. 1976).

[21] NCRA's Request did not cite FOIA nor comply with the Commission's Rules covering FOIA requests.

[22] Policies and Rules Concerning Operator Services Providers, Stuart A. Whitaker, On Request for Inspection of Records, Report and Order, 6 FCC Rcd. 5058, 5059, released August 16, 1991, ("Whitaker") citing Public Citizen Health Research Group v. FDA, 704 F.2d 1280, 1288 (D.C. Cir. 1983).

[23] 5 U.S.C. § 552(b)(4).

the person from whom the information was obtained."[24]

B. Releasing the Information Would Cause Substantial Harm to GTE's Competitive Position.

GTE is unaware of any compelling public interest that would be served by disclosure of the subject information. It is clear that disclosure of such information would likely cause harm to GTE, and could lead to an overall decrease in competition. The information concerns capacity, utilization, and subscriber information of each of GTE's California cellular systems by rate plan, and is ". . . of the type not generally made available to the public by common carriers."[25] Such an outcome is inconsistent with Commission policy and should be avoided.[26]

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[24] Scott J. Rafferty, 5 FCC Rcd. 4138, 4139, rel. July 11, 1990 ("Rafferty"), quoting National Parks & Conservation Ass'n v. Morton, 498 F.2d 765, 770 (D.C. Cir. 1974)("National Parks I").

[25] Application of GTE Corp. and Southern Pacific Co. for Consent to Transfer Control of Southern Pacific Communications Co. and Southern Pacific Satellite Co., Memorandum and Order, 56 Rad, Req. (P&F) 621, 624, released June 8, 1984 ("GTE Corp.").

[26] As the Commission noted, "unauthorized disclosure of proprietary information could lead to substantial competitive and financial harm to the party submitting that information. Such disclosure could also undermine public confidence in the effectiveness and integrity of the Commission's processes, and have a chilling effect on the willingness of parties to provide us with information needed to fulfill our regulatory duties," In re Applications of Craig O. McCaw and American Telephone and Telegraph Company, Memorandum and Opinion, File No. ENF-93-44, adopted September 19, 1994, released September 19, 1994, at para. 163.

GTE concurs with the CPUC's assessment that this information is confidential and proprietary. GTE has consistently argued that the adverse impact of disclosure of this information would be overwhelming.

The disclosure of this information to resellers would be particularly harmful because it would permit resellers to scrutinize competitively sensitive data[27] of GTE. Competitors would gain an advantageous position if they had access to such information as the number of customers served by GTE, their preferred service alternatives, and their usage patterns. Even the use of aggregate subscriber numbers would likely permit competitors to reach reliable conclusions regarding GTE's market shares or levels of market penetration. Significant market research data that is proprietary to GTE would be handed to its competitors if disclosure is allowed. Just as significantly, disclosure of the GTE capacity utilization data would allow competitors to glean sensitive data regarding the configuration and use of GTE's system and to make planning decisions based on that data rather than on their own analysis of the needs of the

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[27] See National Rural Telephone Cooperative, Memorandum Opinion and Order, 5 FCC Rcd. 502 released January 19, 1990 ("Rural Telephone"), See also, Amendment of the Commission's Rules Regarding Confidential Treatment of Information Submitted to the Commission, Report and Order, 98 F.C.C. 2d 1, released May 18, 1994 (replacing the clear and convincing standard of Section 0.459, paragraph (d) with the preponderance of the evidence standard, to protect competitively significant information, promote the free flow of information between industry and government, and resemble standards used in other fora).

marketplace.

Additionally, access of competitors to sensitive carrier specific information would cause "substantial competitive injury" to existing competition.[28] For example, cellular carriers compete, in part, on the basis of perceptions of customer preferences for various pricing plans and on the quality and coverage of cellular service. In a competitive environment, each competitor creates its own individual analysis of the needs of the marketplace, upon which decisions are based. Disclosure would relieve competitors of the normal tasks relating to this analysis; hence competition could be lessened.

IV. Conclusion

The Commission is considering the release of confidential information that would likely have a substantially adverse effect on GTE if made public or disclosed to any of its competitors, including resellers. The CPUC has itself asserted the confidentiality of this information, in the rulings of its ALJ and in the redacted submission of its Petition to the Commission. A decision to adopt a confidentiality agreement at this juncture would appear to constitute an improper and premature adverse decision on the merits of the CCAC Motion, NCRA Request, and

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[28] GTE Corp. at 623.

related pleadings.

WHEREFORE, GTE Service Corporation respectfully requests that consideration of a protective order be deferred until the Commission has ruled on the CCAC Motion, NCRA Petition and related pleadings. A decision on these pleadings which upholds the confidential nature of the information or finds that NCRA's Request is procedurally or substantively defective would moot the need for any protective order. If a contrary decision is reached, GTE would provide comments on the proposed protective order within five business days of the release of the Order. GTE hereby reserves its right to comment on the proposed protective order.

Respectfully submitted,

GTE SERVICE CORPORATION
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October 7, 1994

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Appendix A

TRP/bwg

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's Own Motion Into Mobile Telephone Service and Wireless Communications.	))))	I.93-12-007

ADMINISTRATIVE LAW JUDGE'S RULING GRANTING IN PART MOTIONS FOR CONFIDENTIAL TREATMENT OF DATA

By Administrative Law Judge (ALJ) rulings dated April 11, and April 22, 1994, certain respondents in this proceeding were directed to provide information to the Commission for their cellular operations concerning average subscriber rates, total number of cellular units in service, and capacity utilization rates. Much of the responsive data was provided confidentially pursuant to Commission General Order (GO) 66-C and Public Utilities (PU) Code § 583, but with no justification for the requested confidential treatment.

A subsequent ALJ ruling dated May 5, 1994 directed parties asserting claims of confidentiality under GO 66-C to file a motion by May 16, 1994 providing justification for confidential treatment, based on the standard applied in Pacific Bell, 20 CPUC 2d 237, 252 (1986). Under that standard, confidential treatment would be granted only upon a showing that release of the data would lead to "imminent and direct harm of major consequence, not a showing that there may be harm or that the harm is speculative and incidental." Any party (other than the Commission's Division of Ratepayer Advocates) interested in reviewing any of the data submitted under claims of confidentiality was directed to advise the respective cellular carrier of its interest in entering into a nondisclosure agreement permitting access to such data as required for purposes of this proceeding.

In response to the ALJ ruling, the carriers submitted the requested motions formally requesting confidential treatment for

information provided and offered reasons which they believed justified their confidentiality requests. Some of the carriers disputed the validity of applying a standard as rigorous as that adopted in Pacific Bell for purposes of cellular carriers' confidentiality claims. For example, Bay Area Cellular Telephone Company (BACTC) argues that because cellular carriers face a more competitive environment than was faced by Pacific Bell at the time the cited standard was set, it is not appropriate to hold carriers to such a stringent standard. Yet, because it believes the information provided by the carriers is clearly of such significance to their competitive positions, BACTC argues that the Pacific Bell standard is clearly met anyway, and its legal relevance need not be tested in this case.

Although the carriers agreed generally as to the scope of data to granted confidential treatment, they also expressed some differences of opinion. For example, Los Angeles Cellular Telephone Company (LACTC) does not object to disclosure of the total number of subscriber units as of March 1994, or of the total percentage of units on alternative plans, but does object to disclosure of the precise number of units in each plan, or the minutes of use consumed in each user category. LACTC also has no objection to disclosure of the total number of cell site sectors in operation since this information may be derived from public files. By contrast, the other carriers object to disclosure of both the aggregate number of subscribers on all discount plans as well as the number of subscribers on each individual plan.

Carriers argue that information submitted concerning the number of subscribers under individual payment plans and capacity utilization data is presented in a manner to reveal commercially sensitive information about the carrier's market share and the success of marketing strategies. They contend that disclosure to competitors of detailed information about subscriber response to specific plans would allow competitors to tailor their marketing

plans in response to the carrier's subscribership patterns by pricing plans. Disclosure of subscriber data could enable a competitor to possibly structure an advertising sales message claiming superiority over the competing carrier based on total subscribers or number of subscribers by a specific customer segment. Disclosure of the carriers' capacity utilization data could likewise allow competitors to glean sensitive data as to the configuration and use of the carrier's system as a basis to make planning decisions rather than basing decisions on each competitor's independent analysis of the marketplace.

On May 26, 1994, Cellular Resellers Association, Inc. (CRA) filed a response to the collective motions of the cellular carriers requesting confidential treatment. CRA states that by letters dated May 12, 1994, it requested from each of the carriers to be provided a copy of the data submitted on a confidential basis to the Commission under a nondisclosure agreement. As of May 26, CRA had received data to be held confidentially only from GTE. By letter of May 20, 1994, McCaw refused to provide CRA access to the confidential data even under a nondisclosure agreement. While it has apparently not responded to CRA, BACTC stated in its Motion that it is "fully prepared to disclose even this highly confidential information to counsel for other parties and their designated experts pursuant to customary non-disclosure agreements."

CRA thus requests an ALJ ruling ordering that all of the requested data dated prior to 1992 be publicly released since it would not cause any imminent or direct harm of major consequence. CRA further requests that it be provided all other data for 1992-93 pursuant to a reasonable nondisclosure agreement in the manner agreed to by GTE.

Discussion

Two issues must be resolved relating to nondisclosure of the submitted data. First, what portion, if any, of the data

should be restricted from public disclosure. Second, would disclosure of any of the data to CRA even under a nondisclosure agreement result in competitive harm to cellular carriers?

As to carriers' challenge to the Pacific Bell case as a relevant precedent by which to judge the confidentiality claims of cellular data, no convincing arguments were offered to justify abandoning the standard in this instance. The extent to which cellular carriers are competitive is a contested issue in this proceeding. It would be prejudging this issue to discard the Pacific Bell standard on the premise that cellular carriers are fully competitive. In any event, it has not been shown that even assuming the carriers were competitive, that the standard, itself, should be discarded. If anything, only the determination of how to apply the standard, i.e., what constitutes "imminent and direct harm of major consequence" might be influenced by the degree of competitiveness in an industry. Accordingly, the Pacific Bell standard requiring a showing of "imminent and direct harm of major consequence" is relevant in evaluating the carriers' motions in this instance. Under the Pacific Bell standard, "in balancing the public interest of having an open and credible regulatory process against the desires not to have data it deems proprietary disclosed, we give far more weight to having a fully open regulatory process." (Id. 252.)

It is concluded that the respondents have provided adequate justification for confidential treatment of information on the basis of "imminent and direct harm" relating to certain information only. Confidential treatment is warranted for the number of subscribers associated with specific billing plans and for data relating to capacity utilization, at least for recent periods. As explained above, such information has commercial value to competitors which could be used to the detriment of the carrier disclosing it. On the other hand, carriers have not shown that "imminent and direct harm" will result from disclosure of

information relating to the aggregate number of subscribers associated with all discount plans of a given carrier, or the aggregate number of subscribers serviced by resellers. LACTC, for example, acknowledges that disclosure of aggregate subscribers under all discount plans would not be competitively damaging in its case. No other carrier explained how its circumstances so differed from those of LACTC such that disclosure of such aggregate data could be used to its significant competitive harm.

Carriers generally agree that the rate information in their data responses which is derived from published tariffs can be publicly disclosed without competitive harm. Accordingly, since no basis has been provided to restrict such information, such publicly available tariff data will not be subject to confidential treatment.

CRA argues that data for the period covering 1989-1991 should be publicly released because of its age (almost 2-1/2 years old). CRA's argument is reasonable. Given the rapid pace of technological change and customer growth within the cellular industry, historical data can become quickly outdated and of limited value to competitors in evaluating strategies prospectively. There is little likelihood that historical information as old as from 1989-91 could cause "imminent and direct harm of major consequence" in such a manner.

Regarding the dispute over whether CRA should be granted access to confidential data under a nondisclosure agreement, the following procedure will be adopted. CRA shall be granted access to the data responses provided by carriers on the following terms. A redacted copy of the data responses provided to the Commission by the carriers shall be provided to CRA without the need for a nondisclosure agreement. Information designated confidential under this ruling shall be redacted from the copy provided to CRA.

A separate unredacted version of the data responses disclosing data found to be confidential under this ruling shall be